

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RYAN, LLC,

Plaintiff,

CHAMBER OF COMMERCE OF
THE UNITED STATES OF
AMERICA, BUSINESS
ROUNDTABLE, TEXAS
ASSOCIATION OF BUSINESS, and
LONGVIEW CHAMBER OF
COMMERCE,

*Plaintiff-
Intervenors,*

v.

FEDERAL TRADE COMMISSION,

Defendant.

Case No. 3:24-cv-986-E

**PLAINTIFF-INTERVENORS' RESPONSE TO COMMISSION'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

The Court should deny defendant Federal Trade Commission's motion for summary judgment. ECF No. 184. Each of the matters required by Local Rule 56.4(a) will be set forth in plaintiff-intervenors' accompanying combined reply brief in support of their motion for summary judgment and opposition to the Commission's cross-motion for summary judgment.

Plaintiff-intervenors seek relief from the Commission's Final Rule prohibiting noncompete agreements nationwide. Non-Compete Clause Rule, 89 Reg. Reg. 38,342 (May 7, 2024) ("Final Rule"). Defendant is not entitled to summary judgment on its claim because: (1) Section 6(g) of the Federal Trade Commission Act (FTC Act) does not authorize the Commission to issue binding competition regulations; (2) Section 5 of the FTC Act does not authorize the Commission to declare all noncompetes unlawful as a class; (3) the FTC Act does not authorize the Commission's retroactive rulemaking in invalidating existing noncompetes; and (4) the Commission's decision to adopt the Rule was unreasoned, arbitrary, and capricious.

For the reasons explained in plaintiff-intervenors' accompanying brief, the Court should grant plaintiff-intervenors' motion for summary judgment, deny the Commission's cross-motion for summary judgment, enter judgment for plaintiff-intervenors, and set aside the Rule.

Dated: August 9, 2024

Respectfully submitted,

Jordan L. Von Bokern (D.C. Bar No. 1032962)
Tyler S. Badgley (D.C. Bar No. 1047899)
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, D.C. 20062
Tel: (202) 463-5337
jvonbokern@uschamber.com
tbadgley@uschamber.com

Liz Dougherty (D.C. Bar No. 457352)
BUSINESS ROUNDTABLE
1000 Maine Avenue SW
Washington, D.C. 20024
202-872-1260
ldougherty@brt.org

/s/ Robert L. Sayles
Robert L. Sayles (Texas Bar No. 24049857)
Boyce Holleman (Texas Bar No. 24126727)
BRADLEY ARANT BOULT CUMMINGS LLP
1445 Ross Avenue
Suite 3600
Dallas, TX 75202
Tel: (214) 257-9800
Fax: (214) 939-8787
rsayles@bradley.com
bholleman@bradley.com

Jeffrey B. Wall (Georgia Bar No. 750427)
Judson O. Littleton (D.C. Bar No. 1027310)
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W.
Washington, D.C. 20006-5215
Tel: (202) 956-7000
wallj@sullcrom.com
littletonj@sullcrom.com

*Counsel for Plaintiff-Intervenors
Chamber of Commerce of the
United States of America, Business
Roundtable, Texas Association of
Business, and Longview Chamber
of Commerce*

CERTIFICATE OF WORD COUNT

This document complies with the Procedures for Cases Assigned to District Judge Ada Brown and Standing Order, Rule II(A), because it contains 189 words.

/s/ Robert L. Sayles
Robert L. Sayles

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2024, I electronically transmitted the attached document to the Clerk of the Court and all counsel of record using the ECF System for filing and service in accordance with Local Rule 5.1.

/s/ Robert L. Sayles
Robert L. Sayles